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JAMES XAVIER LINO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF)	CR. NO. 17-00645 LEK
AMERICA,)	
)	DEFENDANT JAMES XAVIER
Plaintiff)	LINO'S REQUEST FOR JUDICIAL
)	RECOMMENDATION FOR
vs.)	TRANSFER TO HOME
)	CONFINEMENT; CERTIFICATE OF
JAMES XAVIER LINO,)	SERVICE
)	
Defendant.)	
)	

**DEFENDANT JAMES XAVIER LINO'S REQUEST FOR JUDICIAL
RECOMMENDATION FOR TRANSFER TO HOME CONFINEMENT**

Defendant JAMES XAVIER LINO, by and through counsel, MELINDA K
YAMAGA, Assistant Federal Defender, requests the Court recommend to the
Bureau of Prisons ("BOP") that Mr. Lino be placed in home confinement for the
maximum period permissible, pursuant to the Coronavirus Aid, Relief and

Economic Security Act (“CARES Act”), Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020), the Second Chance Act of 2007, and 18 U.S.C. § 3621.

To alleviate the crisis in our jails caused by COVID-19, the CARES Act permits the Director of the BOP to lengthen the maximum amount of time a prisoner spends in home confinement. CARES ACT, § 12003(b)(2). Attorney General William Barr (“Attorney General Barr”) has stated “for all inmates whom [the BOP] deems suitable candidates for home confinement, [the BOP is] directed to immediately process them for transfer and then immediately transfer them.”¹ The BOP’s website likewise encourages inmates to request such a transfer.²

Mr. Lino is sick, in the hospital, fighting for his life. He is 65 years old and incarcerated at a facility where approximately 60% of the inmates have now tested positive, less than one month after its first confirmed case of COVID-19.³ Based on Mr. Lino’s family’s last conversation with him, and counsel’s unanswered correspondence to Mr. Lino, it appears he was one of the first cases and likely required hospitalization quickly. Mr. Lino’s family was not aware of his condition until counsel notified them. They are still unable to find out which hospital Mr. Lino is being detained at.

1 Memorandum from Attorney General Barr to Director of Bureau of Prisons (April 3, 2020) (“4/3/2020 Barr Memorandum”), <https://tinyurl.com/yx5qp72s>

2 BOP, *BOP Update on COVID-19 and Home Confinement* (Apr. 5, 2020), <https://tinyurl.com/yx6ehtp2>

3 <https://www.bop.gov/coronavirus>

Without a doubt, having a loved one gravely ill is devastating for anyone. The timing of this illness, in Mr. Lino's case, is both devastating and heartbreaking. Mr. Lino's release date is six short months away. As reflected in the sentence imposed, Mr. Lino had a relatively minor role in the crime, but more importantly, his performance during the thirteen months of pretrial supervision was stellar. During that time he was able to reconnect with his family, and he described his family, in particular the bond he forged with his three-year-old granddaughter, as his source of motivation moving forward.⁴ (PSR ¶ 21). It appears his family had been working with U.S. Probation for the District of Hawaii to make necessary arrangements for Mr. Lino's return before they abruptly lost contact with him. Based on the new information, these endeavors have resumed. Jeri Herrel, mother of their son, is willing to provide a stable residence in her attached enclosed garage. Ms. Herrel has provided probation with the necessary information for vetting, and a virtual tour has been completed.

Pursuant to 18 U.S.C. § 3621(b)(4), the defense requests that this Court join with Mr. Lino's family in maintaining hope that he will recover and recommend to the BOP that he be transferred directly to home confinement and not return to Terminal Island or any other prison.

⁴ It is certainly conceivable, had there been halfway house placement available to Mr. Lino in the District of Hawaii, he would not have been at Terminal Island when the pandemic struck.

DATED: Honolulu, Hawaii, May 6, 2020.

Respectfully submitted,

/s/ Melinda K. Yamaga
MELINDA K. YAMAGA
Attorney for Defendant
JAMES XAVIER LINO

CERTIFICATE OF SERVICE

I, MAX J. MIZONO, hereby certify that, a true and correct copy of the foregoing was served on the following at their last known address on May 6, 2020, by e-mail:

MARK A. INCIONG
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UNITED STATES OF AMERICA

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DATED: Honolulu, Hawaii, May 6, 2020.

/s/ Melinda K. Yamaga
MELINDA K. YAMAGA
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